



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/051,048

01/22/2002

Noriaki Abe

020011

1723

38834

7590

10/15/2008

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER

AGWUMEZIE, CHARLES C

ART UNIT

PAPER NUMBER

3685

MAIL DATE

DELIVERY MODE

10/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/051,048	Applicant(s) ABE ET AL.	
	Examiner CHARLES C. AGWUMEZIE	Art Unit 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-7 and 19-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7 and 19-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/21/04; 02/02/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. Applicants' amendment filed on July 8, 2008 is acknowledged. Accordingly claims 1-4, 6-7, 19-26 and 27-34 remain pending.

Response to Arguments

2. Applicant's arguments filed July 8, 2008 have been fully considered but they are not persuasive.
3. With respect to **claims 1 and 19**, Applicant argues that the cited references fails to describe or teach at least the recitation of claim 1 of, a total operating hours determining step in which total operating hours by usage field for each construction machine are determined based on the usage field data and the operating data for each construction machine in the usage data."

In response, Examiner respectfully disagrees and submits that Kerkinni discloses or describes usage data reporting system for a piece of equipment. For example if the piece of equipment is leased vehicle, the user may enter the personal miles driven, business miles driven for a specified period which usage information may be totaled and compiled for the period relating to the hours of use of the vehicle. Kerkinni further describes in fig. 10 usage information such as odometer readings of the vehicle, personal miles, percent personal miles, personal credit beginning and ending dates of report period including the total miles driven. A total operating hours of a vehicle under personal usage is presumptively different from the total operating hours of a vehicle

under business usage. The damage level of personal use of a vehicle is presumptively less than usage under the business. For example a car that is used for personal errands for 1000 miles would be presumed to be less damaged than a leased car for the same amount of usage. Accordingly it would have been obvious to one of ordinary skill in that art to predict the reporting of usage data according to field of use as claimed.

4. With respect to **claims 2-4, 6-7, 20, 21 and 24**, Applicant argues depend respectively from claims 1 and 19 and therefore patentable for at least the reason of their dependency.

In response, Examiner respectfully disagrees and submits that claims 2-4, 6-7, 20, 21 and 24, are not patentable either because of their respective dependency from claims 1 and 19 nor for their own recited features.

5. With respect to **claims 22 and 25**, Applicant argues that the cited references fails to describe or teach at least the recitation of claim 1 of, a total operating hours determining step in which total operating hours by attachment being attached to each construction machine are determined based on the attachment data and the operating data included in the usage data."

In response and as discussed in previous actions, once an attachment to a construction machine is made, it becomes part of the machine and the amount of workload done or performed by the attachment may be calculated based on the amount of work done by the machine. Accordingly it would have been obvious to one of ordinary skill in the art to calculate the operating hours of the attachment based on the amount of workload done by the machine.

6. With respect to **claims 23 and 26**, Applicant argues depend respectively from claims 22 and 25 and therefore patentable for at least the reason of their dependency.

In response, Examiner respectfully disagrees and submits that claims 23 and 26, are not patentable either because of their respective dependency from claims 22 and 25 nor for their own recited features.

7. With respect to **claims 3 and 20**, Applicant argues depend respectively from claims 1 and 19 and therefore patentable for at least the reason of their dependency.

In response, Examiner respectfully disagrees and submits that claims 3 and 20 are not patentable either because of their respective dependency from claims 1 and 19 nor for their own recited features.

8. With respect to **claim 6**, Applicant argues depend from claims 1 and therefore patentable for at least the reason of its dependency.

In response, Examiner respectfully disagrees and submits that claim 6 is not patentable either because of its dependency from claim 1 nor for their own recited features.

9. Applicant's arguments with respect to **claims 27-34** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3685

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 1-4, 6-7, and 19-26**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finch U.S. patent No. 6,850,902 in view of Worger et al U.S. Patent No. 5,664,113 and further in view of Kerkinni U.S. Patent Application Publication No. 2002/0107833 A1.

12. As per **claims 1 and 19**, Finch discloses a method performed by a computer system for providing secondhand construction machine information, comprising:

a usage data collection step in which, usage data showing facts relating to usage of a plurality of construction machine are collected automatically, said collected usage data including (fig. 2; col. 1, lines 50-65; "...the age and hours of usage of the machinery...");

(a) usage field data for said each construction machine indicating a usage field in which said each construction machine has been used, said usage field being selected from among a plurality of usage fields which differ from each other as to workload placed on a construction machine (col. 1, lines 54-56; ... disclosed fields of usage include farm, lawn and industrial equipments...); and

(b) operating data for each said construction machine indicating operating hours of said each construction machine used in said usage field, (col. 1, lines 54-56; ... disclosed fields of usage include farm, lawn and industrial equipments...; col. 5, lines 37-40;hours of use on the equipment...);

a total operating hours determining step in which total operating hours by usage field for said each construction machine are determined based on the usage field data and the operating data for said each construction machine included in the usage data (col. 5, lines 37-40;hours of use on the equipment...);

and

a display displaying identification information of said plurality of usage fields and the total operating hours by usage field of a construction machine which is selected by a customer from among said plurality of construction machine, are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand articles (fig. 1; col. 1, lines 10-20, 50-65; col. 2, lines 15-20; ...accessible by multiple levels of users...).

13. What Finch does not explicitly disclose is:

a usage data collection step in which, usage data showing facts relating to usage of a plurality of construction machine are collected automatically

a display displaying identification information of said plurality of usage fields and the total operating hours by usage field of a construction machine which is selected by a customer from among said plurality of construction machine, are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand articles.

14. Worger discloses:

a usage data collection step in which, usage data showing facts relating to usage of a plurality of construction machine are collected automatically (col. 2, lines 50-60,

Art Unit: 3685

which discloses that “identification tags are attached to working assets to automatically communicate information to a database when the assets enter and leave various staging areas”; col. 15, lines 5-20, which discloses that working assets to automatically communicate information...)

15. Kerkinni discloses:

a display displaying identification information of said plurality of usage fields and the total operating hours by usage field of a construction machine which is selected by a customer from among said plurality of construction machine, are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand construction machine (fig. 10, which discloses mileage report; 0044, which discloses that “the server database may then recall the usage information and display the usage information to the user 132....”).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate a usage data collection step in which, usage data showing facts relating to usage of a plurality of construction machine are collected automatically; a display displaying identification information of said plurality of usage fields and the total operating hours by usage field of a construction machine which is selected by a customer from among said plurality of construction machine, are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand construction machine in view of Worger and Kerkinni respectively since the claimed invention is merely a combination of old elements, and in the combination each element merely would have

performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

16. As per **claim 2**, Finch failed to explicitly disclose a method, wherein said usage data collection step includes a step for collecting usage data for said plurality of articles by communicating with said plurality of articles from a remote location away from said plurality of articles.

Worger discloses a method, wherein said usage data collection step includes a step for collecting usage data for said plurality of construction machines by communicating with said plurality of construction machines from a remote location away from said plurality of construction machines (col. 3, line 60-col. 4, line 10, which discloses that assignment center 20 may, but need not, be located remotely from public and private staging areas 22 and 24).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate the method, wherein said usage data collection step includes a step for collecting usage data for said plurality of construction machines by communicating with said plurality of construction machines from a remote location away from said plurality of construction machines in as taught by Worger because such service will facilitate real time update of the condition of the said construction machine information.

17. As per **Claims 4**, neither Finch, Worger nor Kerkinni expressly show a system wherein said usage data collection steps, said usage history storage step, and said usage history provision step are conducted simultaneously in parallel so that said plurality of construction machines still in use can be put up for sale as a secondhand construction machines.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The usage data collection steps, usage history storage step, and usage history provision step would be performed the same regardless of the order. Thus, this descriptive material will not distinguish the claimed invention from prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide parallel processing of data because such data does not functionally relate to the steps in the method or system claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

18. As per **claim 7**, Finch further discloses a method further comprising a download step of downloading the usage history or service history for said plurality of articles, which are stored in said data base, to a terminal used by said customer via a network (col. 2, lines 15-50)

19. As per **claims 21 and 23**, Finch discloses the method, further comprising:

a usage data recollecting step in which, when said construction machine is used while said construction machine is being put up for sale as a secondhand construction machine, said usage data is recollected;

a total operating hours updating step in which the total operating hours by usage field are updated based on the usage field data and the operating data included in the recollected usage data (fig. 2; col. 1, lines 20-30, 50-65; "...up-to-date information relating to among other things, ownership, financing, ...the age and hours of usage of the machinery...");

a usage data updating step in which the usage history of said construction machine stored in said data base are updated based on the recollected usage data (fig. 2; col. 1, lines 20-30, 50-65; "...up-to-date information relating to among other things, ownership, financing, ...the age and hours of usage of the machinery..."); and

an updated usage history provision step in which the updated usage history stored in said data base and the updated total operating hours by usage field of the selected construction machine are provided to the customer via the network (fig. 2; col. 1, lines 20-30, 50-65; "...up-to-date information relating to among other things, ownership, financing, ...the age and hours of usage of the machinery...").

20. What Finch does not explicitly teach is:

a usage data recollecting step in which, when said construction machine is used while said construction machine is being put up for sale as a secondhand construction machine, said usage data is recollected.

21. Kerkinni discloses

a usage data recollecting step in which, when said construction machine is used while said construction machine is being put up for sale as a secondhand construction machine, said usage data is recollected (0044, which discloses that "the server database may then recall the usage information and display the usage information to the user 132").

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate a usage data recollecting step in which, when said construction machine is used while said construction machine is being put up for sale as a secondhand construction machine, said usage data is recollected in view of Kerkinni since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

22. As per **claims 22 and 25**, Finch discloses a computer system for providing information about secondhand construction machine, comprising:

usage data collecting step in which usage data that showing facts relating to usage of a plurality of construction machine are collected automatically, said collected

usage data including attachment data for each construction machine indicating an attachment used by said each construction machine and operating data indicating operating hours of said each construction machine for respective attachments;

total operating hours determining step in which total operating hours by attachment being attached to each construction machine are determined based on the attachment data and the operating data included in the usage data (fig. 2; col. 1, lines 50-65; "...the age and hours of usage of the machinery...");

and

a provision step in which a display displaying identification information of said one or more attachments and the total operating hours by attachment for a construction machine which is selected by a customer are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand construction machine.

23. What Finch does not explicitly disclose is:

usage data collecting step in which usage data that showing facts relating to usage of a plurality of construction machine are collected automatically, said collected usage data including attachment data for each construction machine indicating an attachment used by said each construction machine and operating data indicating operating hours of said each construction machine for respective attachments and

a provision step in which a display displaying identification information of said one or more attachments and the total operating hours by attachment for a construction machine which is selected by a customer are provided to the customer via a network,

while said plurality of construction machine are being put up for sale as secondhand construction machine.

24. Worger discloses:

usage data collecting step in which usage data that showing facts relating to usage of a plurality of construction machine are collected automatically, said collected usage data including attachment data for each construction machine indicating an attachment used by said each construction machine and operating data indicating operating hours of said each construction machine for respective attachments (col. 2, lines 50-60, which discloses that “identification tags are attached to working assets to automatically communicate information to a database when the assets enter and leave various staging areas”; col. 15, lines 5-20, which discloses that working assets to automatically communicate information...)

25. Kerkinni discloses:

a provision step in which a display displaying identification information of said one or more attachments and the total operating hours by attachment for a construction machine which is selected by a customer are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand construction machine (fig. 10, which discloses mileage report; 0044, which discloses that “the server database may then recall the usage information and display the usage information to the user 132....”).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant’s invention to modify the method of Finch and incorporate usage data

Art Unit: 3685

collecting step in which usage data that showing facts relating to usage of a plurality of construction machine are collected automatically, said collected usage data including attachment data for each construction machine indicating an attachment used by said each construction machine and operating data indicating operating hours of said each construction machine for respective attachments; a provision step in which a display displaying identification information of said one or more attachments and the total operating hours by attachment for a construction machine which is selected by a customer are provided to the customer via a network, while said plurality of construction machine are being put up for sale as secondhand construction machine in view of Worger and Kerkinni respectively since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

26. As per **claim 24 and 26**, Finch further discloses the computer system, wherein said one or more servers further perform:

recollecting said usage data of said plurality of construction machine when said plurality of construction machine has been used while said plurality of construction machine is being put up for sale as secondhand construction machine;

Storing the recollected usage data on said data base (fig. 1; col. 1, lines 10-20, 50-65; col. 2, lines 15-20);

updating the total operating hours by usage field based on the usage field data and the operating data included in the recollected usage data (fig. 2; col. 1, lines 20-30, 50-65; "...up-to-date information relating to among other things, ownership, financing, ...the age and hours of usage of the machinery..."); and

providing the updated total operating hours by usage field (fig. 1; col. 2, lines 15-20 col. 1, lines 20-30, 50-65; "...up-to-date information relating to among other things, ownership, financing, ...the age and hours of usage of the machinery...").

27. What Finch does not explicitly teach is

recollecting said usage data of said plurality of construction machine when said plurality of construction machine has been used while said plurality of construction machine is being put up for sale as secondhand construction machine.

28. Kerkinni discloses:

recollecting said usage data of said plurality of construction machine when said plurality of construction machine has been used while said plurality of construction machine is being put up for sale as secondhand construction machine (0044, which discloses that "the server database may then recall the usage information and display the usage information to the user 132")

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate recollecting said usage data of said plurality of construction machine when said plurality of construction machine has been used while said plurality of construction machine is being put up for sale as secondhand construction machine in view of Kerkinni since the claimed

invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

29. As per **claims 28, 30, 32, and 34**, Finch failed to explicitly disclose the method whereby the customer obtains the total operating hours in each of the usage fields of the selected construction machine, therefore the customer can understand the damage level of the construction machine.

Kerkinni discloses the method whereby the customer obtains the total operating hours in each of the usage fields of the selected construction machine, therefore the customer can understand the damage level of the construction machine (see fig. 10, 0040; 0041; 0044; 0046, 0049).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate the method whereby the customer obtains the total operating hours in each of the usage fields of the selected construction machine, therefore the customer can understand the damage level of the construction machine in view of Kerkinni since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

30. **Claims 3, and 20**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finch U.S. patent No. 6,850,902 in view of Worger et al U.S. Patent No. 5,664,113 and Kerkinni U.S. Patent Application Publication No. 2002/0107833 A1 and further in view of Ukai U.S. Patent Application Publication No. 2003/0191581 A1.

31. As per **claim 3, and 20**, neither Finch, Worger nor Kerkinni explicitly discloses a method further comprising:

a service data collection step in which, service data that show the facts relating to the service of the said plurality of construction machine are collected, when said plurality of construction machine has been serviced;

a service history storage step in which collected service data are stored as service history in said data base; and

a service history provision step in which, the service history for said selected construction machine stored in said data base, is provided to a customer via a network, when said plurality of construction machine is being put up for sale as a secondhand construction machine

Ukai et al discloses a service data collection step in which, service data that show the facts relating to the service of the said plurality of construction machine are collected, when said plurality of construction machine has been serviced (fig. 6; 0103; 0133; 0134; 0137);

a service history storage step in which collected service data are stored as service history in said data base (fig. 6; 0103; 0133; 0134); and

a service history provision step in which, the service history for said selected construction machine stored in said data base, is provided to a customer via a network, when said plurality of construction machine is being put up for sale as a secondhand construction machine (fig. 2, 5; 0133; 0134; 0137)

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate the ability to provide a service history data, while said construction machine is being put up for sale as a secondhand article, service history data are provided to the customer via the network as taught by Ukai et al in order to make available the service history data immediately available to the potential customer for the purposes of evaluating the condition of the article before purchase.

32. **Claim 6**, is rejected under 35 U.S.C. 103(a) as being unpatentable over Finch U.S. Patent 6,850,902 in view of Worger et al U.S. Patent No. 5,664,113 and Kerkinni U.S. Patent Application Publication No. 2002/0107833 A1 and further in view of Rose Jr. (herein after "Rose") U.S. Patent No. 6,076,064.

33. As per **claim 6**, neither Finch, Worger nor Kerkinni explicitly discloses a method wherein said usage data includes photographic data showing actual images of said construction machine.

Rose discloses a method wherein said usage data includes photographic data showing actual images of said construction machine (col. 7, lines 20-40).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate the ability to provide a usage data wherein said usage data includes photographic data showing actual images of said construction machine as taught by Rose in order to make available the actual images and current state of the construction machine visually apparent to potential customer before purchase.

34. **Claims 27, 29, 31 and 33**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finch U.S. patent No. 6,850,902 in view of Worger et al U.S. Patent No. 5,664,113 and Kerkinni U.S. Patent Application Publication No. 2002/0107833 A1 and further in view of Suggs SR. (hereinafter "Suggs") U.S. Patent Application Publication No. 2007/0021883 A1.

35. As per **claims 27, 29, 31, and 33**, Finch, Worger, Kerkinni failed to explicitly disclose the method, wherein said usage data includes photographic data showing actual images of said plurality of construction machines.

Suggs discloses the method, wherein said usage data includes photographic data showing actual images of said plurality of construction machines (0037; 0044; 0054)

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Finch and incorporate the method wherein said usage data includes photographic data showing actual images of said

plurality of construction machines in view of Suggs since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

36. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on **(571) 272 – 6709**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO

Application/Control Number: 10/051,048
Art Unit: 3685

Page 22

Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charlie C Agwumezie/
Examiner, Art Unit 3685
October 7, 2008

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685